

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.668 OF 1995

M/s.Cazi Exports Pvt.Ltd. ...Plaintiffs

V/s.

Union of India & Ors. ...Defendants

.....

Mr.Vivek Kantawala i/b Kantawala & Co. for
Plaintiffs.

Mr.U.J.Makhija, Sr.Counsel with Ms.V.S.Bhalekar i/b
Mulla & Mulla & Craigie Blunt & Caroe for Defendant
No.5.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 17, 2007.

P.C.

1. This Suit has been ordered to be proceeded under caption undefended Suit in terms of order dated 22nd March 2000. None appears for Defendants 1 to 4. Defendant No.5, by separate order passed today, has been permitted to file written statement which is already taken on record.

2. Insofar as Suit against Defendants 1 to 4

is concerned, the same will have to proceed as undefended Suit in terms of order dated 22nd March 2000, as the said Defendants have not bothered to appear nor filed any written statement so far.

3. The Plaintiffs claim to have imported consignment of C.R.G.O. electric steel sheets of CIF value of Rs.5,79,130/- (Rupees Five Lakhs Seventy-nine Thousand One Hundred Thirty) under Invoice No.DC.7649 dated 13th May 1989. On arrival of the goods in India, the Plaintiffs filed bills of entry of warehouse as required under Section 46 of the Customs Act. The consignment was kept in bonded warehouse. It appears that the Defendant No.2 issued notice dated 11th January 1990 requiring the Plaintiffs to clear the said goods within the specified time after paying duty and interest as is required to be paid under the provisions of the Customs Act. The Plaintiffs were further requested to pay outstanding rent charges of MSWC immediately under intimation to the department of Defendant No.2, failing which, the goods were allowed to be sold in auction scheduled to be held on 31st January 1990. The Plaintiffs

could not clear the goods from the bond on payment of duty within the warehousing period permitted and therefore requested Defendant No.2 by letter dated 19th January 1990 for extension of bond period. Pending consideration of that request, however, the goods imported under the consignment by the Plaintiffs came to be sold at auction on 22nd June 1990 without giving any notice to the Plaintiffs. That action was challenged by the Plaintiffs before the statutory authority. The statutory authority by its order dated 11th September 1992 allowed the Appeal preferred by the Plaintiffs and also directed refund of certain amounts mentioned in the said order receivable by the Plaintiffs. However, insofar as the principal amount recovered by the Defendant No.5 during the auction which amount presumably is remitted to Defendant No.1 is concerned, the statutory authority did not and could not have passed any order in that behalf. It is for this reason that the Plaintiffs have approached this Court for the following reliefs:

"a) that the Defendants be jointly and/or severally ordered and decreed to pay to

the Plaintiff a sum of Rs.7,02,064.00 paise with further interest at the rate of 18% per annum from the date of filing of the suit till payment or realisation as per particulars of claim being Exhibit M hereto.

b) that the costs of the suit be provided for;

c) for such other further and other reliefs as the nature and circumstances of the case may require."

4. According to the Plaintiffs, the Plaintiffs have suffered loss due to wrongful auction at the instance of Defendants 1 and 5 which loss has been specified to the extent of Rs.7,43,394.27 (Rupees Seven Lakhs Forty-three Thousand Three Hundred Ninety-four & Paise Twenty-seven) being the loss of purchase price of the goods. In addition, the Plaintiffs claim interest component on the principal amount of Rs.4,27,203.27 (Rupees Four Lakhs Twenty-seven Thousand Two Hundred Three & Paise Twenty-seven). The Plaintiffs are, in addition, seeking interest at the rate of 18% per annum on the said principal amount of Rs.4,27,203.27 from the date of auction till the institution of this Suit. Besides, Plaintiffs are asking for further interest at the

same rate, till the realisation of the amount. The Plaintiffs, in support of their claim, have filed affidavit of evidence sworn by R.S.Gupta,

Commercial Manager of the Plaintiffs as well as original documents.

5. From the pleadings on record including the evidence of the Plaintiffs and the original documents, the case putforth by the Plaintiffs is clearly made out as against Defendant No.1. Insofar as Defendant No.2 to 4 are concerned, they are statutory authorities under the Customs Act who were the adjudicating authorities under the Customs Act. In other words, the suit claim will have to be proceeded principally against Defendant No.1. Insofar as Defendant No.5 is concerned, it has come on record that the Defendant No.5 has remitted the amount to Defendant No.1 after the stated auction conducted by the Defendant No.5. That amount was available with the Defendant No.1. More over, wrongful auction of the Plaintiffs goods were essentially at the instance of and for the benefit of Defendant No.1. In that sense, if this Court

under the present order were to decree the Suit against the Defendant No.1, nothing would survive for consideration against Defendant No.5 to be made jointly and severally liable to pay the decretal amount. In fact, from the averments of the Plaint, it is not possible to discern as to how Defendant No.5 can be made liable to pay the suit claim amount.

6. Be that as it may, as aforesaid, the Plaintiffs have placed material on record to support their claim. There is no tangible material forthcoming to doubt the correctness of that stand. As a result, I am inclined to decree the Suit in exercise of powers under Order VIII Rule 10 of the Code of Civil Procedure in favour of the Plaintiffs on the following terms:

(a) Accordingly, the Suit is partly decreed against Defendant No.1 only, who in turn is ordered and decreed to pay Plaintiff a sum of Rs.4,27,203.27 (Rupees Four Lakhs Twenty-seven Thousand Two Hundred Three & Paise Twenty-seven Only)

with interest at the rate of 10% per annum from the date of auction i.e. 22nd June 1990 till the institution of the Suit and further interest at the rate of 6% per annum till the realisation of the decretal amount.

(b) No orders as against Defendants 2 to 5, for the reasons already recorded earlier.

(c) The Defendant No.1 do pay costs of this proceedings.

(d) Decree be drawn up on the above terms.

A.M.KHANWILKAR, J.